

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SAMUEL L. BROOKS,)	
)	
Plaintiff,)	
)	Civil Action No. 21-1228
v.)	Judge Cathy Bissoon
)	Magistrate Judge Lisa Pupo Lenihan
ORLANDO L. HARPER, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On October 4, 2022, the Magistrate Judge issued a Report (Doc. 46) recommending that Plaintiff's Motion to Strike (Doc. 38) be granted in part and denied in part. Service of the Report and Recommendation ("R&R") was made on the parties, and no objections have been filed.

After a *de novo* review of the pleadings and documents in the case, together with the R&R, the Court concludes that Rule 12(f) is not the proper procedural vehicle for the relief sought. *See* 5C Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1382 (3d ed. 2022) ("Rule 12(f) motions only may be directed towards pleadings as defined by Rule 7(a); thus motions, affidavits, briefs, and other documents outside of the pleadings are not subject to Rule 12(f).").

While Defendant Trinity initially did not move for dismissal, the Court was explicit that the original complaint was deficient as to Plaintiff's claims against Trinity. *See* May 23, 2022 Report and Recommendation (Doc. 23) at 4 n.2 ("In the interest of judicial efficiency, the Court notes these same Complaint deficiencies in the allegations and claim(s) made against Defendant

Trinity . . .”). And because the original Complaint now is a legal nullity, *see* 6 Wright & Miller, *supra*, § 1476 (“Once an amended pleading is interposed, the original pleading no longer performs any function in the case . . .”), Trinity may seek dismissal of all the claims pleaded in the Amended Complaint.

Accordingly, the Court declines to adopt the R&R and it hereby is **ORDERED** that Plaintiff’s Motion to Strike (**Doc. 38**) is **DENIED**.

IT IS SO ORDERED.

November 2, 2022

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):
All Counsel of Record